

MINUTES

**MONTANA SENATE
56th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON AGRICULTURE, LIVESTOCK AND IRRIGATION

Call to Order: By **CHAIRMAN REINY JABS**, on February 12, 1999 at 3:25 P.M., in Room 413/415 Capitol.

ROLL CALL

Members Present:

Sen. Reiny Jabs, Chairman (R)
Sen. Walter McNutt, Vice Chairman (R)
Sen. Tom A. Beck (R)
Sen. Gerry Devlin (R)
Sen. Pete Ekegren (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Greg Jergeson (D)
Sen. Ken Mesaros (R)
Sen. Linda Nelson (D)
Sen. Jon Tester (D)

Members Excused: None.

Members Absent: None.

Staff Present: Carol Masolo, Committee Secretary
Doug Sternberg, Legislative Branch

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 392, SB 394, SB 401, 2/8/99

Executive Action:

HEARING ON SB 394

Sponsor: SENATOR JON TESTER, SD 45, Big Sandy

Proponents: Ralph Peck, Montana Dept. of Agriculture

Bob Quinn
Ron DeYong, Montana Farmers Union
Bob Stevens, Montana Grain Growers
David Oien
Al Kurki
Mark Mackin

Opponents: None

Opening Statement by Sponsor:

SENATOR JON TESTER, SD 45, Big Sandy, This bill is enabling legislation that allows the Dept. of Agriculture to establish a certified organic program. With the amendments Doug has passed out, (**SEE EXHIBIT(ags35a01)**), petition by 50% of the organic producers, processors and handlers in Montana would initiate the Dept. of Agriculture developing the plan. After the plan came back and after a vote of 2/3 of the producers who petitioned, they could adopt the program.

This bill is in front of you due to federal standards which we expect will be adopted very soon. Those federal standards offer a benefit for state certifiers over private certifiers. The initial petitioning is done by third party certified organic producers. At the present time in Montana those people are all certified by private certifiers. The Federal Government has allowed the states to certify to a higher standard than the private certifiers do. Consequently you can have the seal in front of the package stating Montana certified organic product that would be at a higher level and therefore a marketing tool.

The benefits of the organic program are many. Basically the thrust of organic agriculture is maintaining the viability of the family farm and it does it through adding value and cutting inputs. It has been very successful over the past two decades. This legislation will hopefully ensure the viability of the organic industry in the State of Montana for many years to come.

{Tape : 1; Side : A; Approx. Time Counter : 3.28}

Proponents' Testimony:

Ralph Peck, Department of Agriculture, We've been working with **SENATOR TESTER** and organic producers, growers and processors in Montana to be sure we continue to have access to organic markets in the international market place. We need to be sure we have the opportunity to continue to build every option for every producer in Montana to participate in its markets, marketing

opportunities and options. With the direction the Federal Government is going with the organic certification program, this legislation would provide that opportunity for them to maintain their markets.

Bob Quinn read written testimony. **SEE EXHIBIT(ags35a02)**.

Ron DeYong, Montana Farm Bureau, As we move towards national standards in organic farming, we're going to have to create the process so we will be ready to move into the structure formed nationally if we want to take part. Organic farming will give the family farmer another option. As Mr. Quinn stated, it's also a development issue when we talk about certification in Montana. As organic farming expands and we add value to that mechanism it's going to be good for the State of Montana.

Bob Stevens, Montana Grain Growers, We support this bill wholeheartedly.

David Oien read written testimony. **SEE EXHIBIT(ags35a03)**.

Al Kurki I work as a co-manager of the USDA grants program in 17 western states and Pacific Island Territories which deals with the research and development aspects of organic crop production as well as other areas. I support the bill with the amendments. I was one of the dozen authors of the 1985 Montana Organic Standards Act which made Montana the third state in the country to adopt such standards. What is proposed in **SB 394** is a logical extension and evolution of what's happened in the last fifteen years. This bill is taking place in the context of organic food sales being the only growth area in retail food sales. It's a four billion dollar industry within this country's boundaries.

Mark Mackin I farm on 15 acres on Lake Hauser. I have had a certified farm since 1994. It's certified by the Organic Certification Association of Montana chapter of Organic Crop Improvement Association. OGAM chapter, for instance, serves Hiway 93 and the I-90 corridor. The OGAM chapter has a few livestock and a couple dairy operations, produce and herb growers and also a couple mushroom outfits. My farm has three acres of herbs, produce, seeds and the rest is in hay.

I have some amendments that came from a talk with the Northwest Montana Organic Growers Assoc. **SEE EXHIBIT(ags35a04)**. They wanted to increase the percentage of growers required to trigger the adoption. **SENATOR TESTER** has already raised it to 50% in his amendments. They'll defer to the sponsor on insertion of a new sentence in Sub 4. That's their expression of dissatisfaction with what happened with the national organic standards and the

USDA and the first round of organic standards. They trust **SENATOR TESTER** to make sure control of organics remains in the hands of organic farmers. "Council must be composed of the director of the department." In western Montana there are a lot of market garden operations which have direct relationships with their consumers. It's much more a consumer/grower driven situation. It would be worthwhile to have at least one consumer on the council.

We want to make sure this applies only to those people who are certified by the state. They're the only ones paying assessments to the state. Some growers may be certified by both Montana State and other certifying organizations so we don't run into a situation where we can only sell into a narrow area.

{Tape : 1; Side : A; Approx. Time Counter : 3.49}

Opponents' Testimony: NONE

Questions from Committee Members and Responses:

SENATOR BECK This isn't part of the Governor's budget and there's a fairly good fiscal note on it. How do you plan to address that?

SENATOR TESTER These monies were going to be taken from the Growth through Agriculture and I believe that is in the Governor's budget.

Ralph Peck The 2005 proposal does include some funding for agriculture which would allow individuals to come before them and ask for assistance in developing on a grant basis by individual project. I think that's addressed in the fiscal note. After that it will be self funding.

SENATOR BECK How much money do you have in the Growth for Agriculture, is there enough to take care of this plus the other project?

Ralph Peck Under the existing program, probably not. Under the 2005 proposal it asks for some additional funding in the amount of a million dollars per year, so we anticipate it is going to be very competitive to get that funding should the legislature adopt that proposal.

SENATOR BECK If this is adopted, and the funding isn't there, then the program won't come into fruition?

Ralph Peck We anticipate also that we would work with the industry to look at grant funds that may be available and leverage those dollars as far as we can.

SENATOR NELSON The amendments are at least twice as big as the bill. I'm assuming all of the people who testified did so with the bill as amended.

SENATOR TESTER The amendments really don't change much. They revert back to other areas in the statutes which talk about organic food and delete it out of there. The first change is actually on page 5 of the amendments, the next one is on 8, and the repealers are the very last page.

CHAIRMAN JABS Your amendment on 1c says "this act does not apply to those producers and handlers certified by other private or public, domestic or foreign". The last says "producers, processors and handlers may be certified by both Montana and other organizations. Is there conflict there?

Mark Mackin I don't think so. If the private certifiers continue to exist after the USDA standards have passed, we may still have both state and private certifiers. Some people may want to just stay with a private certifier. They may want to be certified by both.

CHAIRMAN JABS A person certifying now doesn't have to come into this program?

Mark Mackin That would be my understanding.

CHAIRMAN JABS How can you have a successful program if everybody isn't included. Do you have enough people to get going without having everybody in on it?

SENATOR TESTER This legislation offers a significant advantage over the private certifiers. Jumping in and out of the program won't be tolerated. The financial disadvantages to it will be a disincentive. You can be dual certified with a private certifier and the state or be certified by only one. We're not regulating that at all.

Closing by Sponsor:

SENATOR TESTER The integrity has to be second to none and that's what we want to do when we establish this program. We don't want to have the program established incorrectly. We don't want to have any doubt to the consumer that what we're producing in this

state organically is simply the best. We want the program for organic certification to be easy and reliable.

{Tape : 1; Side : A; Approx. Time Counter : 3.58}

HEARING ON SB 401

Sponsor: SENATOR RIC HOLDEN, SD 1, Glendive

Proponents: Marvin Dye, Montana Dept. of Transportation
Ron DeYong, Montana Farmers Union
Jeff Miller, Montana Dept. of Revenue

Opponents: None

Opening Statement by Sponsor:

SENATOR RIC HOLDEN, SD 1, Glendive, Farmers and ranchers struggle to produce food for the nation with higher input cost. On about 90% of the farms and ranches across this state, either the husband or the wife works off the farm for additional income. After the 1997 Legislature adjourned, the Dept. of Transportation aggressively undertook audits and rule making authority to refuse farm fuel refunds for fuel used to plow fields, harvest crops and feed livestock. All this fuel should be considered for the farm fuel refund those people deserve in their operations. In order to deny these refunds, the Dept. began to inspect tax returns and any family farmer who did not earn more than 50% of their income on the farm was denied the standard deduction and refund. Passed out fuel tax credit forms. **SEE EXHIBIT (ags35a05) and EXHIBIT (ags35a06) .**

If you, as a farmer, choose to not itemize every gallon of gas you use and every mile that's driven in each vehicle, you can apply a standard deduction which is only 60% of the fuel you use off the roads. Last session the Dept. brought forth legislation which would have eliminated the use of the standard deduction for farmers who didn't earn 66% of their income on the farm. It failed in the Senate and that's when the rule making authority and auditing began. The Dept. is now using all other income as a method to deny farm fuel refunds for fuel used off the roads.

It all comes down to the definition of agriculture use. The person who earns income from engaging in the business of farming or ranching and who files farm income reports for tax purposes as required by the United States Internal Revenue Dept. would be entitled to the farm fuel standard reduction. **SENATOR CRIPPEN** would like to see the word "while" inserted after the word "from"

on page 3, line 29. Those of you that file federal income tax reports know you need to file a Schedule F. Schedule F is the report that indicates farm income was raised from the operation. It's pretty straight forward, it says if you're in farming and ranching and using fuel off road, you shouldn't be paying a tax for that use.

It comes down to that definition and clears up the problem of using these outside assets against them. I have a gentleman, a senior citizen who has farmed and ranched all his life. He invested in stocks and bonds and receives interest income. He tried to do the best he could to save for the future and is now on social security. He supports the legislation because he was one who got knocked out of getting a legitimate return. He's always used off the road in his operation. Passed out letter from Harold Temple. **SEE EXHIBIT (ags35a07)**.

There are a lot of agriculture people in Montana who have dual incomes. It's not the same story from the 60's and 70's. We do have outside income we bring into our farming operations to keep them solvent. We continue to use fuel off the roads to plow and harvest our crops. I'm asking the legislature to give the farmers what is rightfully theirs for the production of the products we use.

Proponents' Testimony:

Marvin Dye, Director, Department of Transportation, I would like to support the bill with amendments. **SEE EXHIBIT (ags35a08)**. All of us in Montana support agriculture. My grandfathers both homesteaded in Montana and one of those homesteads is still in our family. Agriculture is an important part of our history and hopefully an important part of our future.

There are two ways to get a refund in Montana. One is to keep records of what you've burned off road. The other way is if your major endeavor and primary source of earned income is from farming or ranching. If 50% or more of your income is from agriculture, you qualify for a refund of 60% of the tax on all the fuel you purchased through card lock or bulk fuel. **(Turned Tape)** The law doesn't say you have to burn all the fuel off the road and only get a 60% refund. You can buy bulk fuel, put it in all your vehicles, run it on the road and get 60% of those invoices refunded.

When people don't meet the test because of additional income, they're irritated when we ask for more information. I understand their irritation because they know they're in the business of farming and ranching. We try to work out something with them and

end up giving them somewhat of a refund. It may not be the 60% but a negotiated amount that seems reasonable. Others don't get a refund. Recognizing this problem, we put a hold on our administrative rules.

We propose having the Governor execute an executive order creating a group of people, two Senators, two Representatives, and people in the fuel industry, whether they be petroleum marketers or ag users, to help the Dept. in the interim decide some issues. Should the Dept. of Transportation or Dept. of Revenue be the tax collector? Where should the point of taxation be? What is fair to ag users? There's a whole laundry list of issues out there regarding fuel tax. The Governor has agreed to that and we've already talked to people about serving on this group. We'll come to some solutions and have a good bill for you next time. Without our amendments, the impact of this is fairly significant. Under this bill, if a person files a Schedule F there's no more income test. You get 60%. I know people in the Helena Valley who raise alfalfa on 20 acres of irrigated property. It's baled for them and they sell it. They file a Schedule F. If they are buying their fuel through either cardtroll or bulk, they get 60% of the tax back on all fuel they've burned. That doesn't help agriculture.

We conservatively estimate this impact to be a little over two million dollars, based on the number of Schedule F filers. There are people who will start filing Schedule F to take advantage of this. The budget director files a Schedule F. Does anyone want to see the budget director get a 60% refund on his fuels. What our proposed amendments do won't be perfect. Hopefully perfection will come after we get the best minds together in this executive order to thrash these things out. This amendment puts in place a system that says if your ratio of earned income to other income is this, you get the 60%. That falls in line with what was in place with the existing statute. However, if your ratio falls to 45% to 49%, you may apply for a 50% refund. As your ratio decreases, so does the amount of your refund. This is somewhat what we've been doing, but it's a lot more hassle for the ag user. This takes the hassle out of it. The second page pretty much parallels the special fuel, under the new section we put an effective date of 7/1/99.

{Tape : 1; Side : B; Approx. Time Counter : 4.18}

Ron DeYong, Montana Farmers Union, We think if you are farming and using fuel off the road, you should be eligible for a refund. That's generally the concept that was used to set this up in the first place. The way farm prices are today, it doesn't take much of a job off the farm to earn more than you will on the farm. So we like taking that requirement out. It would be much less

intrusive as far as examination of income tax records the way the bill was originally set up with **SENATOR HOLDEN**. I haven't had a chance to look at the amendments but I'm assuming that it would be less intrusive even with the amendments.

Opponents' Testimony: NONE

Information **Jeff Miller, Department of Revenue**, I offered **SENATOR HOLDEN** a single sheet of amendments and also provided a copy to the staffer. In the event this bill goes forward as is without the Dept. of Transportation amendments, we're suggesting the Dept. of Revenue would only certify whether or not a person filed a Schedule F, not the details of the Schedule F. That's all the amendments do as well as substitute the Dept. of Treasury for IRS, a correct reference as to who is making the rules on filing farm income reports. If it goes forward as it stands now, we would respectfully request those amendments be considered.

Bob Turner gave copy of Farmer's Tax Guide, **SEE EXHIBIT (ags35a09)**.

{Tape : 1; Side : B; Approx. Time Counter : 4.20}

Questions from Committee Members and Responses:

SENATOR DEVLIN If you're tieing this to income, why doesn't the scale go up? If it's 80% you made off the farm, it ought to be more than the 60% refund.

MARV DYE The 60% has it roots in the concept that, without keeping any records and buying the fuel through bulk and cardtrol, you're going to burn some fuel on the road and some off the road. There was some agreement that said the average farmer and rancher will burn 60% of it in the field, off the road and 40% on the road. Then they put the income test at 50%, major endeavor and primary source of earned income.

SENATOR DEVLIN Couldn't a person between 30% and 39% burn just as much as the guy that made 50% of his income from farming? Couldn't that guy burn just as much off the road as the one that gets 60%?

MARV DYE That may be true. The opposite is also true. I have a situation on a farm in my family. There's a tank of dyed diesel and of unleaded fuel. Except for harvest and seeding time when trucks in the fields, about all the gasoline is burned on the road. The way our rules are laid out, that farmer gets a 60% refund on 95% of the fuel burned on the road. That's an extreme the other way. You're going to have extremes no matter what you

do and this is all aimed at trying to find that average that works.

SENATOR DEVLIN My only reaction is from legitimate phone calls I had from people who had to go through the hassle to get this. I'm wondering if you're going to continue this. My other question would be the effective date. Your amendment, July 1, why effective July 1 if your applications come in before then?

Bob Turner We put that on the amendment simply because the way the bill stands there is no effective date, so it would be effective 10/1/99. We put the effective date of 7/1 so we could, in the next couple months, get some education out to the ranchers and farmers.

CHAIRMAN JABS Those applications come in anytime. You can put it in anytime but can't go back more than 14 months.

MARV DYE The first part of your question about hassling people because of the complications of this language? That did happen to varying degrees because of the complications of the language. When you don't meet the test of major endeavor, primary source of earned income, we had to "hassle" them for more information and negotiate to find what was the right thing to do. This puts it in statute, you meet this ratio and this is what you get. We don't hassle anybody. We're all subject to being audited for our taxes and you may come up in a random sample, but we're not going to be out there hassling.

SENATOR JERGESON Do landlords who earn a crop share file Schedule F?

Jeff Miller They typically would. We're presently receiving about 25,000 of our returns with a Schedule F attached. Income can be recorded from these kinds of endeavors on a Schedule E or other schedules on the form depending the primary nature of the activity and the kind of income it is. If it's rental income that would typically show up on a Schedule E.

SENATOR JERGESON But it would look like farm income. It is farm income.

Jeff Miller Yes, but it's just a question of where it gets recorded. I had a side bar discussion and question coming from **SENATOR HALLIGAN**, is the question the size of the operation or otherwise. It's the nature of the income as to what gets reported on which schedules. We're seeing about 25,000 Schedule F's, but that's not all the farm income in the state. Some of that is reported on other schedules.

SENATOR JERGESON A landlord not even close to the farm would be counted as having farm income under this bill who obviously never burned any of the fuel on the farm. The tenant deserves the refund. Does the landlord ten miles out of Bozeman with a bulk tank on his place deserve the refund?

SENATOR BECK This is calculated strictly on earned income and not unearned income, correct?

Bob Turner, Bureau Chief of Fuel Tax and Management, Dept. of Transportation, Gross earned income is not defined in federal regulations or Internal Revenue Service. It should be gross income. Earned income is the net figure after your gross and expenses are taken out. We've been applying gross income. As Jeff pointed out, the bill says any agriculture forms that are required to be filed by the Dept. of Treasury. In essence, that put the Montana Dept. of Transportation under the federal definition of who is a farmer and who is not. That piece will actually expand quite a bit right now. Christmas tree growers are not included as farmers now, but under the federal definition they are. People who grow honey are included under the federal definition of farm income. They also would be eligible under this because they file a federal schedule.

SENATOR BECK My understanding was unearned income was interest income, the sale of a ranch or something like that. Earned income is what you actually get off the value of your ranch. Is there any difference? Somebody has had the tax credit all these years and all of a sudden he inherits some money. He has too much income and you knock him off his gas tax refund. Is that a possibility and do you calculate it that way?

Bob Turner Presently, a farmer figures his percentage, if it's under 50% he would not be eligible. That is not the end of process. He could go to an informal review process, sit down with us and we'll negotiate something with those people as it presently stands.

SENATOR DEVLIN You keep talking about main endeavor but your criteria for allowing this or not is the 50%.

Bob Turner That is correct and we arrived at that through legal opinions, first at the Dept. of Revenue and then the Dept. of Transportation.

SENATOR MCNUTT You said there were two ways to get a refund. By keeping records or by the 50% test. How involved is the record keeping and how difficult is that to do? How many people do you have doing that?

Bob Turner There are two options. A person can get 100% of his motor fuel tax that is spent off road as long as he keeps records. He has to keep mileage so that he can determine how much he drove on off road. That determines what per cent of gallons was actually used off road and the tax tied to that. In 1969 everybody had to keep records. In 1979 it changed so all they had to do was keep track of their purchases from a cardrol, key lock, or tanks. They could take 60% of that, 40% was considered to be on road. Anybody in farming can still get 100% refund back if they keep records of the use on and off road.

CHAIRMAN JABS Another way is to have two tanks, one for on road and one for off.

Bob Turner I'm not positive they don't need mileage with the Dept. If I recollect, that can be done now but they would probably need to submit total gallons, what was used on and off road. Everybody submits their total gallons right now.

SENATOR BECK According to my accountant there's a definition of unearned income. Unearned income is Social Security, interest earnings, those types of incomes. You should only include earned income to classify whether you're eligible for 50% of the ranch operation. Once you get into the person's Social Security, his savings account, that could tip him over where he hasn't got 50% of his agriculture value left in the farming. I want to know if you do that right now.

Bob Turner No, we do not. Under 15-70-223 in the bill it says the ratio is derived at gross agricultural income to total gross income.

SENATOR BECK Total gross income, does that include unearned income?

Bob Turner Yes, it does.

SENATOR BECK Okay, that's what I'm saying shouldn't be included.

SENATOR HALLIGAN This bill should have probably gone to taxation committee. The purpose of the bill was to try to help some legitimate agricultural interests who have to get off the farm or ranch to get a part time job, but the primary beneficiaries of this bill are going to be the suburbanites from my area. Anybody who now has even 20 acres is going to be able to file Schedule F. The fiscal note ought to be more than two million, you're going to get a tremendous amount of people who are going to file Schedule F. I don't think that was the intent at all.

SENATOR HOLDEN When I contacted the Dept. a year ago, I was told the fuel you use off the farm is not supposed to be fuel you fill out this for. I was told clearly if you use this form and represent those gallons of gasoline as off road use fuel, that's fraud. The reason the legislature came up with with the 60% discount is because they thought maybe 40% of the fuel you claim is used on the road. The 60% deduction was put there for ease of filing purposes for agricultural people. Totally different from what you're hearing today. They have the capabilities to audit people they suspect are using fuel in an improper manner.

SENATOR HALLIGAN Aren't the primary beneficiaries going to be the 20 acres and less parcels who can now file Schedule F under this bill?

SENATOR HOLDEN We were given a pie chart of all of people using fuel. This brown sliver represents 4% of everybody. The people in the red and blue represent 16% and 12%. They're saying let's don't give this whole third of people a refund because we suspect 4% is fraudulently claiming a refund. If somebody is claiming a bunch of fuel tax refund money and are only getting \$1,000 or \$2,000 of farm income they're reporting on Schedule F, that triggers an audit. That's the legitimacy of using the Schedule F for auditing purposes on this legislation.

Bob Turner I'd like to first answer **SENATOR HOLDEN's** graph. This graph was made of people who presently file and none of those in addition who will file under the bill. Presently there are about 27,000 Schedule F's filed with the Dept. of Revenue. That does not include corporations, partnerships or small business corporations. We took the number here and subtracted that out of it find out and then halved it to determine approximately how many additional people would actually file. Under **SENATOR HOLDEN's** bill, as it is, what it would do, at least on an individual income tax side, the majority of people do file Schedule F. There is some other income that has to be reported on different Schedules, cattle, CPR payments that may be on Schedule E but those would be the minority where we would have to go in and look at their returns. We could actually get a listing from Dept. of Revenue or send in Social Security numbers and see if they filed a Schedule F under this bill.

SENATOR BECK Let's look at the fiscal note a minute. Statewide impact, \$17 million special revenue fund, it does show over \$4 million special revenue funds.

SENATOR HOLDEN It's interesting how the dialog has changed now. The first two to three weeks of the session, **SENATOR DEVLIN**,

SENATOR COLE and myself met with the Department and asked how many people are being turned down for refunds. They came back with the pie chart to show us people they were turning down for refunds. These were the people they said would capitalize by passage of this bill. If you add up the people, by their own records, it would have been a loss of revenue to the Department of \$230,000. If you use their figures saying there was an average refund of \$475, there were 485 people they said didn't deserve a refund. You multiply that and come up with \$230,00 in revenue. Two years before the Department was not knocking farmers and ranchers out of receiving a refund, but since their rule making authority and since the time they have developed and have staff attorneys to interpret agricultural use, they have developed themselves a system of revenue. They are taking this money out of pockets without having to ask the legislature for increased taxes. This is going to look like tax money coming out of their budget that we have to replace. Before the '97 Legislature they were not taking this money in. This even makes it looks worse if you look at their figures, because now not only do they not want to return \$230,000, now they want to keep two million dollars from the people of Montana.

SENATOR BECK This two million dollars out of special revenue, I'm assuming that's money that's matched with federal money. If we take away four million dollars that's matched eight to one approximately, what is the impact of that?

SENATOR HOLDEN You really can't explain it except that it's a theory.

SENATOR BECK I agree with what you're trying to do. If you go to the Floor with a fiscal note like this, people who don't care about fuel tax refunds are going to say hey, what's this going to do to the federal funds we're going to get in? How are we going to expend those funds, what are we going to do about highway contracts?

SENATOR NELSON We don't have a copy of that pie chart. I took a look at **SENATOR HOLDEN's** briefly. Are these people that applied for a refund and didn't qualify? Under his bill, there would be a lot more that would fit into those categories?

Bob Turner The pie chart just shows of those people who have applied, a small portion have been disqualified. It does not show the additional people that would apply under **SENATOR HOLDEN's** bill. I have to point out the number of applications has increased, and like any program there needs to be education, so that people who actually deserve a refund, apply too.

SENATOR NELSON I wonder how many more would apply. How many small parcels do we have out there?

Bob Turner We estimated about another 8,000 would apply. I think that is a low number. We took 24,000 schedule F's filed by Montana residents, not including non-residents, partnerships, corporations, added 1,000 other corporations, subtracted out the present 9,000 who filed and came up with a total of about 16,000 and said about 50% of those people would apply. We took a present average of our refunds, split it in half and said 8,000 times that equals our Fiscal Note.

SENATOR HALLIGAN If the people in that pie who didn't get their refunds kept their records, they could have filed to get a refund for the records they kept.

Bob Turner They could have received 100% if they had kept records.

SENATOR HALLIGAN You're assuming you have a full time farmer or rancher who wants to be full time but now has to be half time because they can't make it on the ranch. The bill is written so the part time farmer and rancher is going to benefit. That's the problem I can see in the bill, it's so broad. Why not have everyone file the records, then everybody gets 100% for all the off road use.

SENATOR HOLDEN We have a 3 wheeler, a 4 wheeler, snow mobiles, kids filling up tanks, old pickups, things strapped to your tractor. If you want to get 100%, you have to have a list of every mile you travel, every drop of gasoline used in every vehicle. You have to tape or strap that log to your irrigation pumps, all other equipment that uses tanks of gasoline. Those things blow away in the wind and kids are in and out moving machinery, harvest time, you don't record every gallon, every mile. To say I'm going to 100% refund because I'm going to keep track of every mile and every drop of gas I use is just not practical in agriculture.

SENATOR HALLIGAN You never did answer my first question. Why not go with the formula proposed by the Department of Transportation, it makes it easy, a no brainer.

SENATOR HOLDEN It's something we can look at in Executive Session but you also know from what **SENATOR DEVLIN** said, you're still using off the farm income to deny legitimate fuel refunds.

SENATOR DEVLIN How many farmers apply by having all these logs?

Bob Turner I do not have that number but I will get it.

Closing by Sponsor:

SENATOR HOLDEN I close.

{Tape : 2; Side : A; Approx. Time Counter : 4.55}

HEARING ON SB 392

Sponsor: **SENATOR RIC HOLDEN, SD 1, Glendive**

Proponents: **Lorna Karn, Montana Farm Bureau**
Danny Lanning
Ed Hebbe
Ron DeYong, Montana Farmers Union
Craig O'Gorman

Opponents: **Stan Frasier, Montana Wildlife Federation**
Pat Graham, Montana Dept. of Fish, Wildlife &
Parks
Jim Smith, Montana Sheriffs & Peace Officers

Opening Statement by Sponsor:

SENATOR RIC HOLDEN, SD 1, Glendive, At our local Farm Bureau meeting in Dawson County, the ranchers observed that during the summer and fall the deer coming to water at our stock tanks were coming without fawns. While we focus our attention on livestock, we also are hunters and like to have game to hunt in the fall. We all recognized that the antelope and mule deer herds were starting to diminish in numbers. We knew we had a coyote problem regarding our livestock. We had all lost calves and lambs, but we didn't know the coyote problem had grown to such a proportion there was now depredation of wildlife. That includes our pheasant population.

Farm Bureau has had a long standing policy of supporting coyote bounties. If we were to do nothing, coyote populations are only going to grow. Coyotes have been one of the largest problems for the sheep industry. We already have in our statutes a system to set up a state wide coyote bounty program. The last time that system was put in place or funded was 1947. Coyote pelts this year are worth zero. We have essentially no trapping going on in the State of Montana. I called two trappers this year and they both told me they would not trap. They could not afford the gas because they would get nothing for the pelts.

I talked to Fish and Game because they've been getting complaints from sportsmen. The sportsmen recognized wildlife populations are going down. Fish and Game said the coyotes are taking care of themselves through disease control. That was a year and a half ago and now they don't fully agree with their prior position. I was told 10,000 coyotes are trapped in Montana every year during the normal prime fur season. They didn't count on the fur prices going to zero and therefore no incentive for anybody to trap coyotes.

I've done everything I can to make this a cooperative program between the Dept. of Livestock and the Dept. of Fish, Wildlife and Parks. I believe sportsmen and livestock producers have a joint interest in the control of coyotes. For me to take this endeavor on from a strictly livestock position or strictly FWP position is unfair.

This is not a program that will be ongoing without legislative oversight. An automatic sunset provision is built into **SB 392** so this is only a 2 year trial program. **SEE EXHIBIT (ags35a10)**. The trappers and other interested parties, including FWP, were concerned the bounty program would run during the prime fur season. This program is designed to harvest coyotes in the non-prime season, from March 1 to November 30. Page 4, lines 3 through 24, explain how a coyote bounty can be obtained. It's the same methods that have been in place. We changed some things to try to eliminate fraud. The coyote bounty payments are designed to be paid to ranchers and sportsmen in Montana that harvest the coyotes. No government trapping enterprises can receive bounty payments. If coyote bounties are not paid out in that year, the Dept. of Livestock has the authority to negotiate with government trappers to use extra funds. The current law was changed so county sheriffs would receive a 50 cent inspection fee from the person turning in the bounty.

One of the most unique things about this law is on page 8, line 1. If you turn somebody in for fraud, you get to keep two thirds of the fine. The sheriffs already have authority in current statutes to require anybody bringing in a coyote for bounty must provide an affidavit from a witness if the sheriff suspects that person is fraudulently harvesting coyotes from an area outside Montana.

He discussed costs and passed out exhibits. **SEE EXHIBIT (ags35a11), EXHIBIT (ags35a12), EXHIBIT (ags35a13)**.

Livestock producer costs plus sportsmen's contribution will raise about \$100,000 for bounty payments. This bill also requires an appropriation of \$36,000 to the Dept. of Livestock for a .75 FTE.

Distributed a copy of a Billings Gazette article concerning

bounty programs in other states. SEE EXHIBIT(ags35a14). Also passed out letters of support. SEE EXHIBIT(ags35a15), EXHIBIT(ags35a16), EXHIBIT(ags35a17), EXHIBIT(ags35a18), EXHIBIT(ags35a19).

{Tape : 2; Side : A; Approx. Time Counter : 5.15}

Proponents' Testimony:

Danny Lanning We must be allowed to use a tool like this to help stabilize the economy and the well being of this state. This is a self help program that will encourage the general public to help with the devastating problem. It will also enhance the wildlife recovery, such as the native bird populations. Even the Canadian goose has taken to nesting in trees, protecting themselves from predators. Deer and antelope populations are extremely low and the predators are taking their young. The bounty program in place years ago was effective. It helped control extremely high populations of predators until the state ran out of funds. It helped salvage the struggling livestock industry then and it will again. The use of 1080 began shortly after this time period until the government took that tool away from us. Since then we have an explosion in the population of predators. The agriculture community and the economic stability of the state is in real trouble.

Craig O'Gorman We're talking about a war with the coyote. We have excellent predator control programs. We overlook the fact we have the fourth largest state with 20 to 30 men trying to hold down approximately 147,000 square miles. We need to enlist the help of the general public. The sheep industry for years has carried the ball on predator control in the state, almost by itself. Little by little the cattle industry has come on board. We would like to see the Fish and Game industry start carrying part of the ball.

A lot of studies have been run on the damage caused by coyotes. In a 12 year study in the Missouri Breaks, 88% of the fawn loss was due to coyotes. At a recent Fish and Game meeting, the game warden said the Helena area has a 5% fawn survival on mule deer. We have a crisis on mule deer in the state. In checking snares and traps and hunting coyotes, it's not uncommon to see one to three fresh killed deer per day.

There are a number of times deer are extremely vulnerable to predation. One, of course, is during the fawn period. After breeding season, our quality bucks are worn down. We're losing some extremely valuable trophy animals, when a lot of these guides and outfitters are getting \$2700 for a 5 x 5 buck deer.

Recently this year we had a number of freezing rains. You couldn't expect any ungulate animal to stand up in those conditions. The next major time is when the female is very heavily pregnant and can't get around well. At that time, we lose both doe and fawn. Most Montanans would like to see more game and fewer predators. To those that say fraud is the major problem of these programs, I consider that "protect the predator society" language from the grass fed crowd. If they win, we saved 5,000 coyotes to continue to kill our deer and livestock.

These predator programs in the state are expensive. In Wyoming they kill over 7,000 coyotes for \$9.50, that figures out to \$211 per coyote. I don't know why we would not want to kill a coyote through free enterprise for \$20. These costs are going to continue to escalate. Animal Damage Control programs don't target for anything but livestock. A lot of states have not gotten proactive fast enough. Wyoming is a classic example. They're down to a twenty day hunting season since game numbers have dropped. Live livestock pay taxes, live deer are hunting opportunities and generate revenue. Killing these coyotes is flat good business.

Ed Hebbe, President of Montana Trappers Association, The coyote is a bad character when it comes to sheep and cattle. If the furs were salable, you wouldn't have to worry about a bounty system. The letters I got back from our membership are in favor of this bounty system.

Ron DeYong, Montana Farmers Union would like to go on record as being in support of SB 392.

{Tape : 2; Side : A; Approx. Time Counter : 5.25}

Opponents' Testimony:

Stan Frasier, representing self. I'm not very happy with the money taken away from Fish, Wildlife and Parks now and given to the Dept. of Livestock for predator control. I don't think most sportsmen would be happy with that. In fact I don't think most people even know about it. I think the fee on the conservation license may be a problem for the legality of FWP funding. Instead of having a \$10.00 state land access fee which a few people buy, I'd like to have one or two dollars put on conservation licenses so everybody would have it available, which would also raise more money for the School Trust. I keep being told it can't be done because of problems with the funding and legality. Generally I think predator control is a bad idea. Animal Damage Control has spend God knows how many hundreds of millions of dollars over the last 75 years poisoning and trapping

animals and I don't think it's been beneficial to wildlife or agriculture. I would remind you coyotes are wildlife too.

Pat Graham, Director of Fish, Wildlife & Parks, read written testimony. **SEE EXHIBIT (ags35a20).**

Jim Smith, Montana Sheriffs and Peace Officers Assoc., We'll do it for somewhere between two and three dollars per carcass. It's a resource thing. These sheriff offices aren't like they were in 1947. It's quite busy in those offices. The resources and personnel to do this job just don't exist in most of the counties. I don't know if there's a reasonable level which would allow this program to pay for its cost. I urge you to think about how the sheriffs enter into this and what might be done to compensate them for the time and effort they have to invest.

{Tape : 2; Side : A; Approx. Time Counter : 5.36}

Questions from Committee Members and Responses:

SENATOR DEVLIN What is the disposal of the ears? (Turn Tape)
Does he just keep scalp with the ears. Does he just keep that in perpetuity?

SENATOR HOLDEN The sheriff can knock off the ears and give the carcass back to the person who brought in animal for the bounty, or if he suspects fraud he can keep the skin or the carcass.

SENATOR DEVLIN He has the ears and the topknot. What's he going to do with it?

SENATOR HOLDEN Throw them away in the landfill.

SENATOR DEVLIN You have to get both ears or he'll bring it in another day and get the other one.

SENATOR HOLDEN If the sheriff could put it in the garbage can to go to the landfill, throw it in the barrel behind the courthouse.

SENATOR DEVLIN The sheriff better have a sharp knife if he's going to peel that off the top and he's getting 50 cents for this?

SENATOR HOLDEN The sheriff would get 50 cents per head from the person that brought the carcass in.

SENATOR DEVLIN What do you pay now for predator control?

Danny Lanning We have a private program in Carter County where they pay \$1.00 per head per sheep, and there's a proposal to pay .50 cents per head on cattle. We would like to see this bounty program in addition to our private program.

SENATOR DEVLIN What does it cost you per coyote in your program.

Craig O'Gorman I get \$20,000 per year for about 800 coyotes.

SENATOR DEVLIN For 800 coyotes. You have no gasoline expenses or anything.

Craig O'Gorman That's my total gross. We have a \$1.50 for sheep tax and \$1.50 on cows.

SENATOR HALLIGAN We heard some people testify that the system could potentially be racked with fraud and wouldn't work. Why does it work and why wouldn't it be racked with fraud?

Craig O'Gorman You have to have a dead coyote every time. It's not like we can fabricate one that isn't there. I don't know, for \$20.00, the average person is going to have the audacity to walk up to a sheriff and sign this and put himself on the line for that. A lot of counties that have predator programs feel sometimes they get coyotes from out of county, but since coyotes are well known to travel, they feel sooner or later the coyote is going to get there.

SENATOR HALLIGAN Why can't the cattlemen and sheepgrowers just add a special fee on themselves privately and do this themselves?

SENATOR HOLDEN Some counties may do that. The problem is these coyotes move from county to county. Where we're trying to address the problem from a statewide basis, it almost becomes pointless. The way we're set up right now, we have wildlife services that goes in and targets problem areas. It's a good program and takes out problematic coyotes. With this growing population, it's flowing back into the areas where the wildlife services has alleviated the problem. This state wide population soon moves back into those areas. The Fish & Game testified that 10,000 to 20,000 coyotes are taken per year by trappers when there's an incentive of money. We have a growth of 20,000 coyotes that won't be trapped this year.

SENATOR EKEGREN Mr. Frasier, you said you represent yourself. Who do you work for?

Stan Frasier I'm a realtor and president of the Montana Wildlife Federation.

SENATOR EKEGREN I was interested in one statement you made that coyotes are wildlife too and certainly they are. People like you and I, we work maybe for other people and our income is maybe assured. Are you willing, in your belief, to jeopardize the ranch/farm way of life because the coyotes and predators are wildlife too?

Stan Frasier I have a feeling that it's the sheep ranchers responsibility. If he's growing sheep in this particular area and wants to take care of the coyotes, he should go out and do it. I do have a question about the effectiveness of this. I know the more coyotes you kill, the faster they breed. Canine populations seem to make up when there's a gap or a low place in the population. It may be counter productive.

In Alaska several years ago there was a big push by the outfitters and hunters because they felt the wolves were having a real detrimental impact on the moose population. They got the state to do a wolf kill, flew around and shot wolves, it cost about \$450 per wolf. I think they killed about 600 wolves. They were not able to make a determination that it made any difference in the moose population.

SENATOR EKEGREN I live in an area where there's a lot of concern about Fish & Game and these things. We have grizzlies, lions, all these predators. If they're going to be predators to the farm and ranch as well as to humans, obviously there has to be some middle ground between you and **SENATOR HOLDEN**. We can't let the coyotes run absolute wild with no control, or can we. We live here too.

Stan Frasier Over the last nearly 100 years of homesteading and settling of the state, we've seen a tremendous impact on wildlife. Their whole ecosystem was turned upside down. I don't think we have a very good record of managing these things. I live out by the foot of the Divide. When I first moved there, there were a lot of coyotes. A mountain lion moved into the neighborhood and now there aren't hardly any coyotes. I know these things will kind of balance out. What's going to be best for the sheep and cattle producers, I don't know but I think that's their responsibility, not mine.

CHAIRMAN JABS Are you paid by the bounty or so much per year? I understand there are these programs in Colorado and Wyoming. How they tell the difference between a dog ear and a coyote ear?

Craig O'Gorman I'm a private contractor paid by the county. I think it wouldn't be that hard to discern.

CHAIRMAN JABS If we had the program in Montana, you could have the ears here and the skin in Colorado and just go back and forth.

Craig O'Gorman If the ears are taken by the sheriff's department, they wouldn't be able to go anywhere else. Some states would take different animal parts so they could take one part to one state and then to another, but if they're clipped or marked, that should end that.

CHAIRMAN JABS What's the main way you take them, trapping?

Craig O'Gorman Trapping, hunting, shooting, I would think most of these would be taken by shooting.

{Tape : 2; Side : B; Approx. Time Counter : 5.51}

Closing by Sponsor:

SENATOR HOLDEN Fish and Game put it best. We've got a coyote population that's huge and we aren't going to reduce that population because nobody is harvesting them. This spring we're going to be devastated by the amount of coyotes and the depavation of wildlife and livestock. My wife is in the middle of lambing right now and tells me there are so many coyotes they have moved into the buildings. We haven't had that problem before. If the coyotes are moving down into lowlands along the Yellowstone where the population is greater, you know there are a lot of coyotes in the hills.

The sheriffs in this state will inspect an entire load of sheep for \$1.00. They also inspect cattle. It's more than fair they get .50 cents a head for each coyote they inspect. These bounties are paid for animals that are taken in non prime season, March to November. People question the effectiveness of this program. All I'm asking is to give it a 2 year trial period.

Motion: **SEN. NELSON** moved **AMENDMENT TO SB 361.**

{Tape : 2; Side : B; Approx. Time Counter : 5.56}

SENATOR MESAROS The purpose of these amendments are to reduce the Fiscal Note and make some modifications within the amendments. He explained amendments. SEE **EXHIBIT (ags35a21)**.

Vote: Motion **carried unanimously.**

SENATOR BECK I want another Fiscal Note on **SB 401**. We should put the Highway Department's amendments in there and see what the Fiscal Note does. You might not want to leave them in, but at least that gives us something to look at.

Motion: **SEN. BECK** moved **HIGHWAY DEPARTMENT AMENDMENTS TO SB 401**.

SENATOR BECK You try to pass that bill in the form it is now, it's not going to go anywhere. It's big of an impact. Maybe this will bring the Fiscal Note down to where you can live with it. I would like to see earned income versus unearned income as a credit against the gross income that you determine on farming. It has to be earned income, not unearned income. I think there's a definition for that in the tax codes.

SENATOR DEVLIN I don't want every garden farmer in it, but I don't want to get any more calls either because somebody happened to have the good fortune of getting an oil lease or something in a lump sum and he's wondering why he doesn't qualify anymore. He's still using just as much gas on his place.

Motion/Vote: **SEN. BECK** moved **HIGHWAY DEPARTMENT AMENDMENTS AS WELL AS LOOKING AT EARNED INCOME VERSUS UNEARNED INCOME AS A CREDIT AGAINST THE INCOME CLASSIFIED ON THE FORMS.. Motion carried unanimously.**

SENATOR DEVLIN Why don't we work up an amendment to do just that?

ADJOURNMENT

Adjournment: 6:10 P.M.

SEN. REINY JABS, Chairman

CAROL MASOLO, Secretary

RJ/CM

EXHIBIT (ags35aad)